

SENATE BILL No. 151

DIGEST OF INTRODUCED BILL

Citations Affected: IC 31-9-2-40; IC 31-28-4; IC 31-28-5.

Synopsis: Interstate compact for the placement of children. Adopts a revised interstate compact for the placement of children. Provides that the current interstate compact on the placement of children is in effect until the governor issues a proclamation that all 50 states and other participating entities have adopted the new compact.

Effective: July 1, 2007.

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January 11, 2007, read first time and referred to Committee on Judiciary.

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Introduced

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

SENATE BILL No. 151

A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 31-9-2-40, AS AMENDED BY P.L.145-2006,
2 SECTION 190, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2007]: Sec. 40. "Director", for purposes of
4 IC 31-25-1, IC 31-25-2, **IC 31-28-5**, IC 31-33, IC 31-34, and IC 31-37,
5 refers to the director of the department of child services.

6 SECTION 2. IC 31-28-4-1.2 IS ADDED TO THE INDIANA CODE
7 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
8 1, 2007]: **Sec. 1.2. (a) The department shall monitor the adoption of**
9 **the interstate compact for the placement of children under**
10 **IC 31-28-5 by any state, territory, or possession of the United**
11 **States, the District of Columbia, and the Commonwealth of Puerto**
12 **Rico.**

13 **(b) Upon determining that the interstate compact for the**
14 **placement of children enacted in IC 31-28-5 has been adopted by**
15 **every state, territory, and possession of the United States, the**
16 **District of Columbia, and the Commonwealth of Puerto Rico, the**
17 **department shall notify the governor of that fact.**

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(c) Upon receipt of notice under subsection (b), the governor shall issue a proclamation declaring that:

(1) the interstate compact for the placement of children (IC 31-28-5-1) has been adopted by all states, territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; and

(2) as of the date of the proclamation, the interstate compact on the placement of children established by this chapter is no longer in effect.

(d) This chapter expires upon the issuance of the governor's proclamation under subsection (c).

SECTION 3. IC 31-28-4-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 1.5. (a) This chapter remains in effect for any state, territory, and possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico that has not adopted the interstate compact for the placement of children under IC 31-28-5 until the governor issues a proclamation under section 1.2 of this chapter.**

(b) For those states, territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico that have adopted the interstate compact for the placement of children in the format found in IC 31-28-5, IC 31-28-5 shall be used for the interstate placement of children.

SECTION 4. IC 31-28-5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]:

Chapter 5. Interstate Compact for the Placement of Children

Sec. 1. Subject to IC 31-28-4-1.5, the interstate compact for the placement of children is enacted into law under this chapter and entered into with all other jurisdictions legally joining the compact in a form consistent with the compact terms and provisions as stated in this section in a form substantially as follows:

ARTICLE 1. PURPOSE

The purpose of this interstate compact for the placement of children is to:

(1) Provide a process through which children subject to this compact are placed in safe and suitable homes in a timely manner.

(2) Facilitate ongoing supervision of a placement, the delivery of services, and communication between the states.

(3) Provide operating procedures that will ensure that children

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are placed in safe and suitable homes in a timely manner.

(4) Provide for the adoption and enforcement of administrative rules implementing the provisions of this compact and regulating the covered activities of the member states.

(5) Provide for uniform data collection and information sharing between member states under this compact.

(6) Promote coordination between this compact, the Interstate Compact for Juveniles, the Interstate Compact on Adoption and Medical Assistance, and other compacts that affect the placement of and that provide services to children otherwise subject to this compact.

(7) Provide for a state's continuing legal jurisdiction and responsibility for placement and care of a child that it would have had if the placement were intrastate.

(8) Provide for the promulgation of guidelines, in collaboration with Indian tribes, for interstate cases involving Indian children as is or may be permitted by federal law.

ARTICLE II. DEFINITIONS

As used in this compact:

(1) "Approved placement" means the receiving state has determined after an assessment that the placement is both safe and suitable for the child and is in compliance with the applicable laws of the receiving state governing the placement of children in that state.

(2) "Assessment" means an evaluation of a prospective placement to determine whether the placement meets the individualized needs of the child, including but not limited to the child's safety and stability, health and well-being, and mental, emotional, and physical development.

(3) "Child" means an individual who is less than eighteen (18) years of age.

(4) "Default" means the failure of a member state to perform the obligations or responsibilities imposed upon it by this compact, the bylaws, or rules of the interstate commission.

(5) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaskan native village as defined in section 3(c) of the Alaska Native Claims settlement Act at 43 U.S.C. 1602(c).

(6) "Interstate commission for the placement of children" means the commission that is created under Article VIII of this

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compact and which is generally referred to as the interstate commission.

(7) "Jurisdiction" means the power and authority of a court to hear and decide matters.

(8) "Member state" means a state that has enacted this compact.

(9) "Noncustodial parent" means a person who, at the time of the commencement of court proceedings in the sending state, does not have sole legal custody of the child or has joint legal custody of a child, and who is not the subject of allegations or findings of child abuse or neglect.

(10) "Nonmember state" means a state that has not enacted this compact.

(11) "Notice of residential placement" means information regarding a placement into a residential facility provided to the receiving state including, but not limited to the name of the child, date and place of birth of the child, the identity and address of the parent or legal guardian, evidence of authority to make the placement, and the name and address of the facility in which the child will be placed. Notice of residential placement shall also include information regarding a discharge and any unauthorized absence from the facility.

(12) "Placement" means the act by a public or private child placing agency intended to arrange for the care or custody of a child in another state.

(13) "Private child placing agency" means any private corporation, agency, foundation, institution, or charitable organization, or any private person or attorney that facilitates, causes, or is involved in the placement of a child from one (1) state to another and that is not an instrumentality of the state or acting under color of state law.

(14) "Provisional placement" means that the receiving state has determined that the proposed placement is safe and suitable, and, to the extent allowable, the receiving state has temporarily waived its standards or requirements otherwise applicable to prospective foster or adoptive parents so as to not delay the placement. Completion of the receiving state requirements regarding training for prospective foster or adoptive parents shall not delay an otherwise safe and suitable placement.

(15) "Public child placing agency" means any government child welfare agency or child protection agency or a private entity under contract with such an agency, regardless of whether they

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act on behalf of a state, county, municipality, or other governmental unit and which facilitates, causes, or is involved in the placement of a child from one (1) state to another.

(16) "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought.

(17) "Relative" means someone who is related to the child as a parent, stepparent, sibling by half or whole blood or by adoption, grandparent, aunt, uncle, or first cousin or a nonrelative with such significant ties to the child that they may be regarded as relatives as determined by the court in the sending state.

(18) "Residential facility" means a facility providing a level of care that is sufficient to substitute for parental responsibility or foster care, and is beyond what is needed for assessment or treatment of an acute condition. For purposes of the compact, residential facilities do not include institutions primarily educational in character, hospitals, or other medical facilities.

(19) "Rule" means a written directive, mandate, standard, or principle issued by the interstate commission promulgated under Article XI of this compact that is of general applicability and that implements, interprets, or prescribes a policy or provision of the compact. "Rule" has the force and effect of statutory law in a member state, and includes the amendment, repeal, or suspension of an existing rule.

(20) "Sending state" means the state from which the placement of a child is initiated.

(21) "Service member's permanent duty station" means the military installation where an active duty Armed Services member is currently assigned and is physically located under competent orders that do not specify the duty as temporary.

(22) "Service member's state of legal residence" means the state in which the active duty Armed Services member is considered a resident for tax and voting purposes.

(23) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands, and any other territory of the United States.

(24) "State court" means a judicial body of a state that is vested by law with responsibility for adjudicating cases involving abuse, neglect, deprivation, delinquency, or status offenses of individuals who have not attained the age of eighteen (18).

(25) "Supervision" means monitoring provided by the receiving

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state once a child has been placed in a receiving state pursuant to this compact.

ARTICLE III. APPLICABILITY

(a) Except as otherwise provided in subsection (b), this compact applies to the following:

(1) The interstate placement of a child subject to ongoing court jurisdiction in the sending state, due to allegations or findings that the child has been abused, neglected, or deprived as defined by the laws of the sending state. However, the placement of such a child into a residential facility requires only notice of residential placement to the receiving state before placement.

(2) The interstate placement of a child adjudicated delinquent or unmanageable based on the laws of the sending state and subject to ongoing court jurisdiction of the sending state if:

(A) the child is being placed in a residential facility in another member state and is not covered under another compact; or

(B) the child is being placed in another member state and the determination of safety and suitability of the placement and services required is not provided through another compact.

(3) The interstate placement of any child by a public child placing agency or private child placing agency as defined in this compact as a preliminary step to a possible adoption.

(b) The provisions of this compact do not apply to:

(1) The interstate placement of a child with a nonrelative in a receiving state by a parent with the legal authority to make such a placement; however, the placement is not intended to effectuate an adoption.

(2) The interstate placement of a child by one (1) relative with the lawful authority to make such a placement directly with a relative in a receiving state.

(3) The placement of a child not subject to subsection (a), into a residential facility by the child's parent.

(4) The placement of a child with a noncustodial parent provided that:

(A) the noncustodial parent proves to the satisfaction of a court in the sending state a substantial relationship with the child;

(B) the court in the sending state makes a written finding that placement with the noncustodial parent is in the best interests of the child; and

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(C) the court in the sending state dismisses its jurisdiction over the child's case.

(5) A child entering the United States from a foreign country for the purpose of adoption or leaving the United States to go to a foreign country for the purpose of adoption in that country.

(6) Cases in which a United States citizen child living overseas with the child's family, at least one (1) of whom is in the United States Armed Services, and who is stationed overseas, is removed and placed in a state.

(7) The sending of a child by a public child placing agency or a private child placing agency for a visit as defined by the rules of the interstate commission.

(c) For purposes of determining the applicability of this compact to the placement of a child with a family in the United States Armed Services, the public child placing agency or private child placing agency may choose the state of the service member's permanent duty station or the service member's declared legal residence.

(d) This compact shall not be construed to prohibit the concurrent application of the provisions of this compact with other applicable interstate compacts including the interstate compact for juveniles and the interstate compact on adoption and medical assistance. The interstate commission may, in cooperation with other interstate compact commissions having responsibility for the interstate movement, placement, or transfer of children, promulgate like rules to ensure the coordination of services, timely placement of children, and the reduction of unnecessary or duplicative administrative or procedural requirements.

ARTICLE IV. JURISDICTION

(a) The sending state shall retain jurisdiction over a child with respect to all matters of custody and disposition of the child which it would have had if the child had remained in the sending state. Such jurisdiction shall also include the power to order the return of the child to the sending state.

(b) When an issue of child protection or custody is brought before a court in the receiving state, the court shall confer with the court of the sending state to determine the most appropriate forum for adjudication.

(c) In accordance with its own laws, the court in the sending state shall have authority to terminate its jurisdiction if:

(1) the child is reunified with the parent in the receiving state who is the subject of allegations or findings of abuse or neglect, only with the concurrence of the public child placing agency in

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the receiving state;

(2) the child is adopted;

(3) the child reaches the age of majority under the laws of the sending state;

(4) the child achieves legal independence pursuant to the laws of the sending state;

(5) a guardianship is created by a court in the receiving state with the concurrence of the court in the sending state;

(6) an Indian tribe has petitioned for and received jurisdiction from the court in the sending state; or

(7) the public child placing agency of the sending state requests termination and has obtained the concurrence of the public child placing agency in the receiving state.

(d) When a sending state court terminates its jurisdiction, the receiving state child placing agency shall be notified.

(e) Nothing in this article shall defeat a claim of jurisdiction by a receiving state court sufficient to deal with an act of truancy, delinquency, crime, or behavior involving a child as defined by the laws of the receiving state, committed by the child in the receiving state, and which would be a violation of the laws of the receiving state.

(f) This article does not limit the receiving state's ability to take emergency jurisdiction for the protection of the child.

ARTICLE V. ASSESSMENTS

(a) Before sending, bringing, or causing a child to be sent or brought into a receiving state, the public child placing agency shall provide a written request for assessment to the receiving state.

(b) Before sending, bringing, or causing a child to be sent or brought into a receiving state, the private child placing agency shall:

(1) provide evidence that the applicable laws of the sending state have been complied with;

(2) certify that the consent or relinquishment is in compliance with applicable law of the birth parent's state of residence or, where permitted, the laws of the state where the finalization of the adoption will occur;

(3) request through the public child placing agency in the sending state an assessment to be conducted in the receiving state; and

(4) upon completion of the assessment, obtain the approval of the public child placing agency in the receiving state.

(c) The procedures for making and the request for an assessment shall contain all information and be in such form as provided for in

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the rules of the interstate commission.

(d) Upon receipt of a request from the public child welfare agency of the sending state, the receiving state shall initiate an assessment of the proposed placement to determine its safety and suitability. If the proposed placement is a placement with a relative, the public child placing agency of the sending state may request a determination of whether the placement qualifies as a provisional placement.

(e) The public child placing agency in the receiving state may request from the public child placing agency or the private child placing agency in the sending state, and shall be entitled to receive, supporting or additional information necessary to complete the assessment.

(f) The public child placing agency in the receiving state shall complete or arrange for the completion of the assessment within the timeframes established by the rules of the interstate commission.

(g) The interstate commission may develop uniform standards for the assessment of the safety and suitability of interstate placements.

ARTICLE VI. PLACEMENT AUTHORITY

(a) Except as provided in subsection (c), no child subject to this compact shall be placed into a receiving state until approval for such placement is obtained.

(b) If the public child placing agency in the receiving state does not approve the proposed placement, the child shall not be placed. The receiving state shall provide written documentation of any such determination in accordance with the rules promulgated by the interstate commission. Such determination is not subject to judicial review in the sending state.

(c) If the proposed placement is not approved, any interested party shall have standing to seek an administrative review of the receiving state's determination.

(d) The administrative review and any further judicial review associated with the determination shall be conducted in the receiving state under its applicable administrative procedures.

(e) If a determination not to approve the placement of the child in the receiving state is overturned upon review, the placement shall be considered approved; however, all administrative or judicial remedies must be exhausted or the time for such remedies must have passed.

ARTICLE VII. STATE RESPONSIBILITY

(a) For the interstate placement of a child made by a public child placing agency or state court:

(1) the public child placing agency in the sending state shall

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1 have financial responsibility for:

2 (A) the ongoing support and maintenance for the child
3 during the period of the placement, unless otherwise
4 provided for in the receiving state; and

5 (B) as determined by the public child placing agency in the
6 sending state, services for the child beyond the public
7 services for which the child is eligible in the receiving state;

8 (2) the receiving state shall have financial responsibility only
9 for:

10 (A) any assessment conducted by the receiving state; and

11 (B) supervision conducted by the receiving state at the level
12 necessary to support the placement as agreed upon by the
13 public child placing agencies of the receiving and sending
14 states; and

15 (3) nothing in this compact prohibits public child placing
16 agencies in the sending state from entering into agreements
17 with licensed agencies or persons in the receiving state to
18 conduct assessments and provide supervision.

19 (b) For the placement of a child by a private child placing agency
20 preliminary to a possible adoption, the private child placing agency
21 shall be:

22 (1) legally responsible for the child during the period of
23 placement as provided for in the law of the sending state until
24 the finalization of the adoption; and

25 (2) financially responsible for the child absent a contractual
26 agreement to the contrary.

27 (c) A private child placing agency shall be responsible for any
28 assessment conducted in the receiving state and any supervision
29 conducted by the receiving state at the level required by the laws of
30 the receiving state or the rules of the interstate commission.

31 (d) The public child placing agency in the receiving state shall
32 provide timely assessments, as provided for in the rules of the
33 interstate commission.

34 (e) The public child placing agency in the receiving state shall
35 provide, or arrange for the provision of, supervision and services for
36 the child, including timely reports, during the period of the
37 placement.

38 (f) This compact does not limit the authority of the public child
39 placing agency in the receiving state to contract with a licensed
40 agency or person in the receiving state for an assessment or the
41 provision of supervision or services for the child or otherwise
42 authorize the provision of supervision or services by a licensed

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agency during the period of placement.

(g) Each member state shall provide for coordination among its branches of government concerning the state's participation in, and compliance with, the compact and interstate commission activities, through the creation of an advisory council or use of an existing body or board.

(h) Each member state shall establish a central state compact office, which shall be responsible for state compliance with the compact and the rules of the interstate commission.

(i) The public child placing agency in the sending state shall oversee compliance with the provisions of the Indian Child Welfare Act (25 U.S.C. 1901 et seq.) for placements subject to the provisions of this compact, before placement.

(j) With the consent of the interstate commission, states may enter into limited agreements that facilitate the timely assessment and provision of services and supervision of placements under this compact.

ARTICLE VIII. INTERSTATE COMMISSION FOR THE PLACEMENT OF CHILDREN

The member states hereby establish, by way of this compact, a commission known as the "interstate commission for the placement of children". The activities of the interstate commission are the formation of public policy and are a discretionary state function. The interstate commission:

(1) is a joint commission of the member states and shall have the responsibilities, powers and duties set forth herein, and such additional powers as may be conferred upon it by subsequent concurrent action of the respective legislatures of the member states;

(2) consists of one (1) commissioner from each member state who shall be appointed by the executive head of the state human services administration with ultimate responsibility for the child welfare program. The appointed commissioner shall have the legal authority to vote on policy related matters governed by this compact binding the state;

(3) operates under the following requirements:

(A) a requirement that each member state represented at a meeting of the interstate commission is entitled to one (1) vote;

(B) a requirement that a majority of the member states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the interstate

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commission;

(C) a requirement that a representative shall not delegate a vote to another member state;

(D) a requirement that a representative may delegate voting authority to another person from the same member state for a specified meeting; and

(E) a requirement that in addition to the commissioners of each member state, the interstate commission shall include persons who are members of interested organizations as defined in the bylaws or rules of the interstate commission. Such members shall be ex officio and shall not be entitled to vote on any matter before the interstate commission; and

(4) shall establish an executive committee which shall have the authority to administer the day-to-day operations and administration of the interstate commission. The executive committee does not have the power to engage in rulemaking.

ARTICLE IX. POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The interstate commission has the following powers to:

(1) Promulgate rules and take all necessary actions to effect the goals, purposes, and obligations as enumerated in this compact.

(2) Provide for dispute resolution among member states.

(3) Issue, upon request of a member state, advisory opinions concerning the meaning or interpretation of the interstate compact, its bylaws, rules, or actions.

(4) Enforce compliance with this compact or the bylaws or rules of the interstate commission under Article XII.

(5) Collect standardized data concerning the interstate placement of children subject to this compact as directed through its rules which shall specify the data to be collected, the means of collection and data exchange, and reporting requirements.

(6) Establish and maintain offices as may be necessary for the transacting of its business.

(7) Purchase and maintain insurance and bonds.

(8) Hire or contract for services of personnel or consultants as necessary to carry out its functions under the compact and establish personnel qualification policies and rates of compensation.

(9) Establish and appoint committees and officers including, but not limited to, an executive committee as required by Article X.

(10) Accept any and all donations and grants of money,

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equipment, supplies, materials, and services, and receive, use, and dispose of the donations and grants.

(11) Lease, purchase, accept contributions or donations of, or otherwise own, hold, improve, or use any property, real, personal, or mixed.

(12) Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed.

(13) Establish a budget and make expenditures.

(14) Adopt a seal and bylaws governing the management and operation of the interstate commission.

(15) Report annually to the legislatures, governors, the judiciary, and state advisory councils of the member states concerning the activities of the interstate commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the interstate commission.

(16) Coordinate and provide education, training, and public awareness regarding the interstate movement of children for officials involved in such activity.

(17) Maintain books and records in accordance with the bylaws of the interstate commission.

(18) Perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

ARTICLE X. ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

(a) Bylaws.

(1) Within twelve (12) months after the first interstate commission meeting, the interstate commission shall adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of this compact.

(2) The interstate commission's bylaws and rules shall establish conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

(b) Meetings.

(1) The interstate commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the member states, shall call additional meetings.

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(2) Public notice shall be given by the interstate commission of all meetings, and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The interstate commission and its committees may close a meeting, or part of a meeting, where it determines by two-thirds (2/3) vote that an open meeting would be likely to:

(A) relate solely to the interstate commission's internal personnel practices and procedures;

(B) disclose matters specifically exempted from disclosure by federal law;

(C) disclose financial or commercial information which is privileged, proprietary, or confidential in nature;

(D) involve accusing a person of a crime, or formally censuring a person;

(E) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy or physically endanger one (1) or more persons;

(F) disclose investigative records compiled for law enforcement purposes; or

(G) specifically relate to the interstate commission's participation in a civil action or other legal proceeding.

(3) For a meeting, or part of a meeting, closed under this provision, the interstate commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exemption provision. The interstate commission shall keep minutes which shall fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons for the actions, including a description of the views expressed and the record of a roll call vote. All documents considered in connection with an action shall be identified in the minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the interstate commission or by court order.

(4) The bylaws may provide for meetings of the interstate commission to be conducted by telecommunication or other electronic communication.

(c) Officers and Staff.

(1) The interstate commission may, through its executive committee, appoint or retain a staff director for such period, upon such terms and conditions, and for such compensation as

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the interstate commission may consider appropriate. The staff director shall serve as secretary to the interstate commission, but shall not have a vote. The staff director may hire and supervise such other staff as may be authorized by the interstate commission.

(2) The interstate commission shall elect, from among its members, a chairperson and a vice chairperson of the executive committee and other necessary officers, each of whom shall have such authority and duties as may be specified in the bylaws.

(d) Qualified Immunity, Defense, and Indemnification.

(1) The interstate commission's staff director and the employees of the commission are immune from suit and liability, either personally or in official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to any actual or alleged act, error, or omission that occurred, or that the staff director or employee had a reasonable basis for believing occurred, within the scope of commission employment, duties, or responsibilities. The staff director or an employee is not protected from suit or liability for damage, loss, injury, or liability caused by a criminal act or intentional or willful and wanton misconduct.

(2) The liability of the interstate commission's staff director and employees or interstate commission representatives, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state, may not exceed the limits of liability set forth under the Constitution and laws of that state for state officials, employees, and agents. The interstate commission is considered to be an instrumentality of the states for the purposes of any such action. Nothing in this subsection shall be construed to protect such person from suit or liability for damage, loss, injury, or liability caused by a criminal act or the intentional or willful and wanton misconduct of such person.

(3) The interstate commission shall defend the staff director and its employees and, subject to the approval of the attorney general or other appropriate legal counsel of the member state, shall defend the commissioner of a member state in a civil action seeking to impose liability arising out of an actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing

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occurred within the scope of interstate commission employment, duties, or responsibilities, if the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

(4) To the extent not covered by the state involved, member state, or the interstate commission, the representatives or employees of the interstate commission shall be held harmless in the amount of a settlement or judgment, including attorney's fees and costs, obtained against such persons arising out of an actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, if the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

ARTICLE XI. RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

(a) The interstate commission shall promulgate and publish rules in order effectively and efficiently to achieve the purposes of the compact.

(b) Rulemaking shall occur under the criteria set forth in this article and the bylaws and rules adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the "Model State Administrative Procedures Act," 1981 Act, Uniform Laws Annotated, Vol. 15, p. 1 (2000), or such other administrative procedure acts as the interstate commission considers appropriate and consistent with due process requirements under the United States Constitution as now or hereafter interpreted by the United States Supreme Court. All rules and amendments shall become binding as of the date specified, as published with the final version of the rule as approved by the interstate commission.

(c) When promulgating a rule, the interstate commission shall, at a minimum:

(1) publish the proposed rule's entire text stating the reasons for that proposed rule;

(2) allow and invite any and all persons to submit written data, facts, opinions, and arguments, which information shall be added to the record, and be made publicly available; and

(3) promulgate a final rule and its effective date, if appropriate, based on input from state or local officials or interested parties.

(d) Rules promulgated by the interstate commission shall have the

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1 force and effect of statutory law and shall supersede any state law,
2 rule, or regulation to the extent of any conflict.

3 (e) Not later than sixty (60) days after a rule is promulgated, an
4 interested person may file a petition in the U.S. District Court for the
5 District of Columbia or in the federal district court where the
6 interstate commission's principal office is located for judicial review
7 of such rule. If the court finds that the interstate commission's action
8 is not supported by substantial evidence in the rulemaking record,
9 the court shall hold the rule unlawful and set it aside.

10 (f) A majority of the legislatures of the member states may reject
11 a rule by enacting a statute or resolution in the same manner used to
12 adopt the compact which provides that the rule shall have no further
13 force and effect in any member state.

14 (g) The existing rules governing the operation of the interstate
15 compact on the placement of children superseded by this act shall be
16 null and void no less than twelve (12), but no more than twenty-four
17 (24), months after the first meeting of the interstate commission
18 created hereunder, as determined by the members during the first
19 meeting.

20 (h) Within the first twelve (12) months of operation, the interstate
21 commission shall promulgate rules addressing the following:

- 22 (1) Transition rules.
- 23 (2) Forms and procedures.
- 24 (3) Time lines.
- 25 (4) Data collection and reporting.
- 26 (5) Rulemaking.
- 27 (6) Visitation.
- 28 (7) Progress reports/supervision.
- 29 (8) Sharing of information/confidentiality.
- 30 (9) Financing of the interstate commission.
- 31 (10) Mediation, arbitration, and dispute resolution.
- 32 (11) Education, training, and technical assistance.
- 33 (12) Enforcement.
- 34 (13) Coordination with other interstate compacts.

35 (i) Upon determination by a majority of the members of the
36 interstate commission that an emergency exists:

- 37 (1) The interstate commission may promulgate an emergency
38 rule only if it is an emergency rule required to:
- 39 (A) Protect the children covered by this compact from an
40 imminent threat to their health, safety, and well-being;
- 41 (B) Prevent loss of federal or state funds; or
- 42 (C) Meet a deadline for the promulgation of an

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administrative rule required by federal law.

(2) An emergency rule shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided hereunder shall be retroactively applied to the rule as soon as reasonably possible, but not later than ninety (90) days after the effective date of the emergency rule.

(3) An emergency rule shall be promulgated as provided for in the rules of the interstate commission.

ARTICLE XII. OVERSIGHT, DISPUTE RESOLUTION, ENFORCEMENT

(a) Oversight.

(1) The interstate commission shall oversee the administration and operation of the compact.

(2) The executive, legislative, and judicial branches of state government in each member state shall enforce this compact and the rules of the interstate commission and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The compact and its rules shall supersede state law, rules, or regulations to the extent of any conflict with the compact and its rules.

(3) All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact.

(4) The interstate commission shall be entitled to receive service of process in any action in which the validity of a compact provision or rule is the issue for which a judicial determination has been sought and shall have standing to intervene in any proceedings. Failure to provide service of process to the interstate commission shall render any judgment, order, or other determination, however so captioned or classified, void as to the interstate commission, this compact, its bylaws, or rules of the interstate commission.

(b) Dispute Resolution.

(1) The interstate commission shall attempt, upon the request of a member state, to resolve disputes which are subject to the compact and which may arise among member states and between member and nonmember states.

(2) The interstate commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes among compacting states. The costs of such mediation or dispute resolution shall be the responsibility of the parties to the dispute.

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1 (c) Enforcement.

2 (1) If the interstate commission determines that a member state
3 has defaulted in the performance of its obligations or
4 responsibilities under this compact, its bylaws, or rules, the
5 interstate commission may:

6 (A) provide remedial training and specific technical
7 assistance;

8 (B) provide written notice to the defaulting state and other
9 member states of the nature of the default and the means of
10 curing the default. The interstate commission shall specify
11 the conditions by which the defaulting state must cure its
12 default;

13 (C) by majority vote of the members, initiate against a
14 defaulting member state legal action in the United States
15 District Court for the District of Columbia or, at the
16 discretion of the interstate commission, in the federal district
17 where the interstate commission has its principal office, to
18 enforce compliance with the provisions of the compact, its
19 bylaws, or rules. The relief sought may include both
20 injunctive relief and damages. If judicial enforcement is
21 necessary, the prevailing party shall be awarded all costs of
22 such litigation, including reasonable attorney's fees; or

23 (D) avail itself of any other remedies available under state
24 law or the rules relating to the regulation of official or
25 professional conduct.

26 **ARTICLE XIII. FINANCING OF THE COMMISSION**

27 (a) The interstate commission shall pay or provide for the
28 payment of the reasonable expenses of its establishment,
29 organization, and ongoing activities.

30 (b) The interstate commission may levy on and collect an annual
31 assessment from each member state to cover the cost of the
32 operations and activities of the interstate commission and its staff,
33 which must be in a total amount sufficient to cover the interstate
34 commission's annual budget as approved by its members each year.
35 The aggregate annual assessment amount shall be allocated based
36 upon a formula to be determined by the interstate commission,
37 which shall promulgate a rule binding upon all member states.

38 (c) The interstate commission shall not incur obligations of any
39 kind before securing the funds adequate to meet the obligations; nor
40 shall the interstate commission pledge the credit of any of the
41 member states, except by and with the authority of the member state.

42 (d) The interstate commission shall keep accurate accounts of all

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receipts and disbursements. The receipts and disbursements of the interstate commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the interstate commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the interstate commission.

ARTICLE XIV. MEMBER STATES, AMENDMENT

(a) Any state is eligible to become a member state.

(b) The compact shall become effective and binding upon legislative enactment of the compact into law by thirty-five (35) states. The effective date shall be the later of July 1, 2007, or upon enactment of the compact into law by the thirty-fifth state. Thereafter it shall become effective and binding as to any other member state upon enactment of the compact into law by that state. The executive heads of the state human services administration with ultimate responsibility for the child welfare program of nonmember states or their designees shall be invited to participate in the activities of the interstate commission on a non-voting basis before adoption of the compact by all states.

(c) The interstate commission may propose amendments to the compact for enactment by the member states. No amendment shall become effective and binding on the member states unless and until it is enacted into law by unanimous consent of the member states.

ARTICLE XV. WITHDRAWAL AND DISSOLUTION

(a) Withdrawal.

(1) Once effective, this compact continues in force and remains binding upon each and every member state. However, a member state may withdraw from the compact by specifically repealing the statute which enacted the compact into law.

(2) Withdrawal from this compact shall be by the enactment of a statute repealing the statute establishing the compact. The effective date of withdrawal is the effective date of the repeal of the statute.

(3) The withdrawing state shall immediately notify the president of the interstate commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The interstate commission shall then notify the other member states of the withdrawing state's intent to withdraw.

(4) The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of

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withdrawal.

(5) Reinstatement following withdrawal of a member state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the members of the interstate commission.

(b) Dissolution of compact.

(1) This compact shall dissolve effective upon the date of the withdrawal or default of the member state which reduces the membership in the compact to one (1) member state.

(2) Upon the dissolution of this compact, the compact becomes void and is of no further force or effect, and the business and affairs of the interstate commission shall be concluded and surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XVI. SEVERABILITY AND CONSTRUCTION

(a) The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is considered unenforceable, the remaining provisions of the compact shall be enforceable.

(b) The provisions of this compact shall be liberally construed to effectuate its purposes.

(c) Nothing in this compact shall be construed to prohibit the concurrent applicability of other interstate compacts to which the states are members.

ARTICLE XVII. BINDING EFFECT OF COMPACT AND OTHER LAWS

(a) Other laws.

(1) This compact does not prevent the enforcement of any other law of a member state that is not inconsistent with this compact.

(2) All member states' laws conflicting with this compact or its rules are superseded to the extent of the conflict.

(b) Binding effect of this compact.

(1) All lawful actions of the interstate commission, including all rules and bylaws promulgated by the interstate commission, are binding upon the member states.

(2) All agreements between the interstate commission and the member states are binding in accordance with their terms.

(3) If any provision of this compact exceeds the constitutional limits imposed on the legislature of any member state, the provision is ineffective to the extent of the conflict with the constitutional provision in question in that member state.

ARTICLE XVIII. INDIAN TRIBES

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1 Notwithstanding any other provision in this compact, the
 2 interstate commission may promulgate guidelines to permit Indian
 3 tribes to use the compact to achieve any or all of the purposes of
 4 the compact as specified in Article I. The interstate commission
 5 shall make reasonable efforts to consult with Indian tribes in
 6 promulgating guidelines to reflect the diverse circumstances of the
 7 various Indian tribes.

8 Sec. 2. Financial responsibility for a child placed under the
 9 provisions of the interstate compact for the placement of children
 10 shall be determined in accordance with Article VII of the interstate
 11 compact for the placement of children (section 1 of this chapter).
 12 However, for the partial or complete default of performance, the
 13 provisions of IC 31-18 also may be invoked. In any appropriate
 14 case, financial support or contribution may be obtained by an
 15 appropriate agency in Indiana under IC 31-40 to aid in the
 16 discharge of the financial obligations of a sending agency that has
 17 placed a child in another state under the compact.

18 Sec. 3. The officers and agencies of Indiana and the subdivisions
 19 of Indiana having authority to place children may enter into
 20 agreements with appropriate officers or agencies of or in other
 21 party states under Article VII of the interstate compact for the
 22 placement of children (section 1 of this chapter). An agreement
 23 that contains a financial commitment or imposes a financial
 24 obligation on Indiana or a subdivision or agency of Indiana is not
 25 binding unless the agreement has the approval in writing of the
 26 auditor of state in the case of the state and of the chief local fiscal
 27 officer in the case of a subdivision of the state.

28 Sec. 4. A requirement for visitation, inspection, or supervision
 29 of children, homes, institutions, or other agencies in another
 30 member state that applies under a provision of IC 31 is considered
 31 to be met if performed under an agreement entered into between
 32 appropriate officers or agencies of Indiana or a subdivision of
 33 Indiana and appropriate officers or agencies of the other member
 34 state or a subdivision of the other member state as contemplated
 35 by Article IV of the interstate compact for the placement of
 36 children (section 1 of this chapter).

37 Sec. 5. A court having jurisdiction to place children in a home,
 38 a facility, or an institution may place the child in a home, a facility,
 39 or an institution in another state under the interstate compact for
 40 the placement of children (section 1 of this chapter) and shall
 41 retain jurisdiction as provided in Article IV of the interstate
 42 compact for the placement of children (section 1 of this chapter).

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1 **Sec. 6. As used in Article VIII of the interstate compact for the**
 2 **placement of children (section 1 of this chapter), the term**
 3 **"executive head" means the director. The director may appoint a**
 4 **compact administrator in accordance with the terms of Article VII**
 5 **of the interstate compact for the placement of children (section 1**
 6 **of this chapter).**

7 **SECTION 5. [EFFECTIVE JULY 1, 2007] (a) Cases involving the**
 8 **placement of children under the interstate compact on the**
 9 **placement of children under IC 31-28-4 that are pending when the**
 10 **interstate compact for the placement of children (IC 31-28-5-1, as**
 11 **added by this act) goes into effect under IC 31-28-4-1.5, as added**
 12 **by this act, are governed by the interstate compact on the**
 13 **placement of children under IC 31-28-4.**

14 **(b) This SECTION expires December 31, 2012.**

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